

IT 95-57

Tax Type: INCOME TAX

Issue: Unreported/Underreported Income (Fraud Application)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

DEPARTMENT OF REVENUE

STATE OF ILLINOIS

v.

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Mimi Brin

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely protest by XXXXX (hereinafter referred to as the "Taxpayers") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on July 22, 1994. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayers had failed to file an Illinois income tax return for the year ending December 31, 1992 (hereinafter referred to as the "Tax Year"). The notice proposed an assessment of tax as well as various statutory penalties and interest.

The taxpayers appeared at the hearing on the date and at the time set by proper notice of hearing. At the hearing, taxpayers admitted that they had not filed the return at issue and raised concerns about other required filings. I requested that taxpayers meet and work with a member of the Department's Taxpayer's Assistance division.

I recently received the file from the Department's Taxpayer's Assistance division. Pursuant to the information submitted by the taxpayers to that unit, it is my recommendation, for the reasons stated below, that the Notice of Deficiency be finalized to reflect a reduced liability for tax. It is also my recommendation that appropriate penalties

and interest be assessed and finalized.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Deficiency which indicates that the taxpayers owe tax and penalties to the State of Illinois in the amount of \$1,532.00 for the tax year ending 1992. Dept. Ex. No. 1

2. Taxpayers, residents of Illinois during the tax year, filed a Federal income tax return for the tax year. Dept. Ex. No. 1

3. Taxpayers failed to file an Illinois income tax return for the tax year. Dept. Ex. No. 1

4. Taxpayers submitted to the Department's Taxpayer's Assistance division, W-2 Wage and Tax Statements for 1992 (hereinafter referred to as "W-2").

5. Taxpayers' submitted W-2s indicating that \$603.00 had been already been withheld from taxpayers' wages for Illinois taxes for the tax year.

CONCLUSIONS OF LAW: The Illinois Income Tax Act, 35 ILCS 5/101 et seq., provides inter alia, that Illinois residents shall file pertinent returns with the State showing all items of income allocated for the period of residency. 35 ILCS 3/301 It also states, in pertinent part:

904 Deficiencies and Overpayments.

(b) No return filed. If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due. The Department shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed.

35 ILCS 5/904(b)

At hearing, the taxpayers admitted that they had failed to file the required return. They did indicate, however, that they believed that the

amount withheld by their employers from their income covered their tax liability.

During the hearing, I suggested that the taxpayers submit documentation to the Department's Taxpayer's Assistance division, which they did. I have received from that unit copies of taxpayers' W-2s for the tax year showing funds withheld for Illinois taxes in the amount of \$603.00. The Department's proposed assessment, based upon the taxpayers' Federal income tax return, is for \$902.00 in taxes. Applying the amount already paid, it is my recommendation that taxpayers' tax liability be reduced to \$299.00.

The Department's notice also proposed penalties for the failure to file and pay the tax due timely and for the failure to file and pay estimated taxes. Based upon taxpayers' admission that they did not file, it is also my recommendation that the penalties as proposed are finalized in the appropriate amounts, as well as statutory interest.

Based upon the above, it is my recommendation that taxpayers' tax liability be finalized as reduced, with the appropriate penalties and interest also finalized.

Mimi Brin
Administrative Law Judge